

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :
: **ORDER**
v. :
: 13 CR 233-01 (VB)
JUAN CARLOS RODRIGUEZ-FRANCISCO, :
Defendant. :
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By letter dated June 17, 2020, which will be separately docketed, defendant moves for a second time for a reduction of his sentence pursuant to 18 U.S.C. § 3582(c)(1)(A).

Defendant first moved for a reduction of sentence pursuant to Section 3582(c)(1)(A) by letter dated April 19, 2020. (Doc. 86). By Order dated April 21, 2020, the Court denied defendant's motion because: (i) it did not appear defendant had properly exhausted his administrative remedies before seeking the requested relief; (ii) defendant failed to show extraordinary and compelling reasons warranting a reduction of his sentence; and (iii) to reduce defendant's 15 year sentence by more than five years in light of the current public health crisis would promote disrespect for the law and would undermine critical sentencing objectives in this case, namely, the need for the sentence imposed to afford adequate deterrence to criminal conduct and protect the public from further crimes of the defendant. (Doc. #87).

Defendant's second motion again fails to demonstrate exhaustion, which is itself a reason to deny the motion. See, e.g., United States v. Ogarro, 2020 WL 1876300, at *3-5 (S.D.N.Y. Apr. 14, 2020); United States v. Roberts, 2020 WL 1700032, at *2 (S.D.N.Y. Apr. 8, 2020).

Also, defendant, for the first time, states that he suffers from sleep apnea and "has a history of diabetes." This is contrary to what he told the Probation Department prior to sentencing, as reflected in the presentence report ("PSR"), that as a result of diet and exercise he had lost weight and "he no longer is pre-diabetic or suffers from sleep apnea." (PSR ¶ 50). He also told Probation that he "now enjoys good health." (PSR ¶ 52). Nothing in defendant's latest submission alters the Court's previous determination that defendant fails to show extraordinary and compelling reasons warranting a reduction in sentence, and that if the Court were to reduce defendant's sentence, even in light of the current public health crisis, that would promote disrespect for the law and undermine critical sentencing objectives in this case.

Accordingly, defendant's second motion for a reduction of his term of imprisonment is DENIED.

The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith, and therefore in forma pauperis status is denied for the purpose of an appeal. See Coppedge v. United States, 369 U.S. 438, 444-45 (1962).

Chambers will mail a copy of this Order to defendant at the following address:

Juan Carlos Rodriguez-Fernandez
Reg. No. 68295-054
LSCI Allenwood
P.O. Box 1000
White Deer, PA 17887

Dated: June 19, 2020
White Plains, NY

SO ORDERED:



Vincent L. Briccetti
United States District Judge